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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

LORRY WAGNER, On Behalf of Himself and
 All Others Similarly Situated,

Plaintiff,

vs.

LOUDCLOUD, INC., GOLDMAN SACHS &
 CO., MORGAN STANLEY & CO. INC.,
 THOMAS WEISEL PARTNERS LLC, EPOCH
 SECURITIES, INC., ALLEN & COMPANY
 INC., CIBC WORLD MARKETS CORP.,
 DAIN RAUSCHER INCORPORATED,
 RAYMOND JAMES & ASSOCIATES, INC.,
 ROBERTSON STEPHENS, INC., WIT
 SOUNDVIEW CORP., MARC L.
 ANDREESSEN, BENJAMIN A. HOROWITZ,
 RODERICK M. SHERWOOD III, WILLIAM
 V. CAMPBELL, MICHAEL S. OVITZ and
 ANDREW S. RACHLEFF,

Defendants.

) No.

) CLASS ACTION

) COMPLAINT FOR VIOLATION OF THE
) FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

SUMMARY OF ACTION

1
2 1. This is a securities class action on behalf of all persons who acquired the common
3 stock of Loudcloud, Inc. ("Loudcloud" or the "Company") pursuant to a registration statement and
4 prospectus (collectively, the "Prospectus") declared effective by the SEC in connection with the
5 Company's March 8, 2001 initial public offering (the "Offering"). This action arises from
6 Loudcloud's March 2001 initial public offering pursuant to which the Company's directors and
7 underwriters together sold 25 million shares of Loudcloud common stock at \$6 per share, raising
8 \$150 million from public investors.

9 2. The Prospectus used by defendants to sell \$150 million worth of Loudcloud stock was
10 false and misleading because, among other things, it failed to disclose:

11 (a) Loudcloud's plan to substantially reduce its work force and to restructure
12 immediately following the Offering;

13 (b) that the Offering was not raising funds sufficient to enable the Company to
14 reach profitability and accomplish the planned expansion described in the Prospectus;

15 (c) that a major contract to which one of the underwriters was a party was being
16 terminated; and

17 (d) that in order to enable the Offering to go forward, sales of shares were being
18 made to insiders and the selling price of the Offering was artificially maintained by the undisclosed
19 sale of part of the Offering to insiders.

20 3. As the truth about Loudcloud and its operations reached the market, the price of
21 Loudcloud shares fell to less than \$2.00 per share, inflicting over \$100 million in damages upon
22 plaintiff and the Class.

JURISDICTION

23
24 4. This action arises under §§11, 12(a)(2) and 15 of the Securities Act of 1933 (the
25 "Securities Act"), 15 U.S.C. §§77k, 77l(a)(2) and 77o.

26 5. This Court has jurisdiction over the subject matter of this action pursuant to §22 of
27 the Securities Act, 15 U.S.C. §77v, and 28 U.S.C. §§1331 and 1337(a).

16. Each of the named defendants in ¶¶10-15 (the "Individual Defendants") participated in the Offering by, among other things, preparing, reviewing and/or signing the Registration Statement/Prospectus.

17. Defendants Goldman Sachs & Co. and Morgan Stanley & Co. were the lead underwriters of the underwriting syndicate which, together with the Individual Defendants and their other underwriter partners, raised \$150 million via the Offering. Set forth below are the defendant underwriters (the "Underwriter Defendants") and the number of shares each sold in the Offering:

Underwriters	Number of Shares
Goldman, Sachs & Co.	9,200,000
Morgan Stanley & Co. Incorporated	9,200,000
Thomas Weisel Partners LLC	3,560,000
Epoch Securities, Inc.	1,780,000
Allen & Company Incorporated	210,000
CIBC World Markets Corp.	210,000
Dain Rauscher Incorporated	210,000
Raymond James & Associates, Inc.	210,000
Robertson Stephens, Inc.	210,000
Wit SoundView Corporation	<u>210,000</u>
TOTAL	25,000,000

18. The Underwriter Defendants are investment banking houses which specialize, *inter alia*, in underwriting public offerings of securities. These firms served underwriters of the Offering, for which they shared in very substantial fees of many millions of dollars.

19. As underwriters of the Offering, these defendants sold and distributed to the public, including plaintiff and members of the Class, more than 25 million shares of Loudcloud common stock pursuant to the Prospectus. As part of their duties as underwriters of the Offering, the Underwriter Defendants supposedly conducted, prior to the Offering, a "due diligence" investigation pursuant to which they had access to adverse facts regarding Loudcloud's business as set forth herein. The Underwriter Defendants received substantial fees, expenses and discounts in connection with the Offering. The Underwriter Defendants also participated in "Roadshow" presentations in major U.S. cities in the two weeks prior to the Offering, during which the then-existing problems with Loudcloud's business were not disclosed and glowing projections for Loudcloud were made to stimulate investors' interest and demand for Loudcloud stock.

1 20. The Underwriter Defendants agreed to participate in the Offering in order to obtain
2 substantial fees, expenses and discounts in connection with the Offering. The Underwriter
3 Defendants had access to confidential corporate information concerning Loudcloud's operations and
4 financial condition. The Underwriter Defendants also had access to Loudcloud's future business
5 plans and prospects. The Underwriter Defendants assisted Loudcloud and the Individual Defendants
6 in planning the Offering and conducting a due diligence investigation into the business operations
7 and future business prospects. In the course of such investigations, the Underwriter Defendants
8 themselves and through their counsel met with representatives of Loudcloud and counsel, during
9 January and February 2001. During these meetings, including those known as "drafting sessions,"
10 representatives of the participants met to discuss the timing and terms of the Offering and the
11 contents of the Prospectus. These parties, in part through their agents, discussed and reached
12 understandings as to:

- 13 (a) The terms of the Offering;
- 14 (b) The language to be used in the Prospectus;
- 15 (c) What disclosures about Loudcloud would be made in the Prospectus; and
- 16 (d) What responses would be made to the SEC in connection with its review of
17 the Registration Statement containing the Prospectus.

18 21. The Underwriting Defendants were aware of and received copies of all drafts of the
19 Prospectus, including those by which the Offering was consummated. The Underwriting Defendants
20 caused the Prospectus to be delivered to potential and actual purchasers of Loudcloud common stock
21 in connection with offers and sales thereto. From facts learned during their "due diligence"
22 investigation of Loudcloud in connection with the Offering, the Underwriter Defendants knew or
23 should have known that the Prospectus was false and misleading when issued as alleged herein.

24 22. Each of the underwriters received substantial compensation for their participation in
25 the Loudcloud Offering, receiving in the aggregate over \$10 million. In connection with the
26 Offering, the Underwriter Defendants issued, caused to be issued, and participated in the issuance
27 of the materially false Prospectus, which misrepresented and failed to disclose, *inter alia*, the
28 material facts concerning the business and operations of Loudcloud as set forth herein.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on his own behalf and as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class of all persons who purchased the common stock of Loudcloud pursuant or traceable to the false and misleading Prospectus which was declared effective on or about March 8, 2001 (the "Class"), including those who acquired Loudcloud shares directly from the Underwriter Defendants. Excluded from the Class are defendants herein, members of the immediate families of each of the Individual Defendants, any subsidiary or affiliate of any defendant, and the directors, officers, and employees of any defendant or their subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

24. Members of the Class are so numerous that joinder of all members is impracticable. Specifically:

(a) There were 25 million shares of Loudcloud common stock issued pursuant to the Prospectus; and

(b) While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of Class members who acquired Loudcloud shares pursuant to the Prospectus.

25. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the other members of the Class have sustained damages because of defendants' unlawful activities alleged herein. Plaintiff has retained counsel competent and experienced in class and securities litigation and intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by plaintiff. Plaintiff has no interests which are contrary to or in conflict with those of the Class plaintiff seeks to represent.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

per share, pursuant to the Registration Statement/Prospectus (the "Prospectus").¹ Page 3 of the Prospectus described Loudcloud's business as follows:

We offer businesses a new class of Internet infrastructure services. Using our Opware technology, which automates formerly manual tasks associated with deployment and maintenance of Internet operations, we provide a suite of services that addresses the challenges of deploying, maintaining and growing Internet operations for critical business functions. These manual tasks include configuring hardware with the appropriate operating system, testing the stability of the hardware within the overall operational environment, managing the performance of the hardware and software on an ongoing basis and expanding the capabilities of the infrastructure. Our Opware technology allows us to centrally and consistently deploy and maintain our customers' Internet operations across multiple locations, with less manual intervention than would traditionally be required. We generate revenue from the sale of our services, which incorporate the technology infrastructure and the deployment and maintenance expertise required to support and expand the scope of a customer's Internet operations.

(a) Page 3 of the Prospectus also detailed Loudcloud's planned *expansion*, stating as follows:

We plan to *expand* the geographic scope of the Loudcloud Infrastructure Network and to *extend* the capabilities to our Opware technology. We also intend to continue to invest in the development and integration of *additional* services and to *expand* the scope of services we provide.

(b) At pages 9-10, the Prospectus also discussed the growth and expansion of Loudcloud's operators, stating:

(iii) We have rapidly *expanded* our business since we were founded in September 1999. We have *increased* our number of employees from 71 at January 31, 2000, to 147 at April 30, 2000, and to 586 at January 31, 2001. This *growth* has placed, *and will continue to place, a significant strain on our employees, management systems and other resources*. We expect our business to continue to *grow in terms of headcount*, geographic scope, number of customers and number of services we offer. There will be additional demands on our customer service support, research and development, sales and marketing and administrative resources as we try to *increase* our service offerings, expand our geographic scope and expand our target markets. The strains imposed by these demands are magnified by our limited operating history. We may not be able to successfully manage our *growth*. In order to manage our *growth* successfully, we must:

¹ According to the Company's later SEC filings, the breakdown of the fees collected as a result of the Offering, were as follows:

	<u>Per Share</u>	<u>Total</u>
Initial Public Offering Price	\$6.00	\$150,000,000
Underwriting Discount	\$0.42	\$ 10,500,000
Proceeds - Before Expenses - to Loudcloud	\$5.58	\$139,500,000

- *improve* and *add* to our management, financial and information systems and controls and other elements of our business process infrastructure;
- maintain a high level of customer service and support; and
- *expand*, retain, train, manage and integrate *our employee base* effectively.

Any failure by us to effectively manage our *growth* could disrupt our operations or delay execution of our business plan and consequently harm our business.

(c) Page 47 of the Prospectus again represented the Company's continued growth, stating:

We expect that our cost of revenue will increase significantly as we continue to deploy additional customers, *increase headcount* and lease additional third-party data center in multiple locations.

* * *

As of January 31, 2001, we had 586 full-time employees. *We expect to hire substantial numbers of new employees in the foreseeable future.* Our future success will depend upon our ability to attract, integrate, retain and motivate highly qualified technical and management personnel, for whom competition is intense.

OMISSIONS AND MISSTATEMENTS

32. Following the completion of the IPO which enabled defendants to raise \$150 million, the truth concerning Loudcloud's operations began to reach the market, causing Loudcloud's stock to fall to its present level of approximately \$2.00 per share. The true facts which were omitted from and/or misrepresented in the Prospectus were:

(a) that at the time of the Offering, the Company was not intending to increase its workforce as Loudcloud was already planning to down-size its operations and substantially reduce its workforce;

(b) that the underwriters were unable to sell Loudcloud's entire offering to the public, and were forced to rely upon purchases by corporate insiders to make up the short-fall of nearly \$8 million;

(c) that Loudcloud's own business plan, upon which the Offering was based, required tens of millions of dollars of additional financing beyond that to be obtained in the IPO,

1 meaning that it was a certainty, rather than only a possibility, that Loudcloud required additional
2 funding;

3 (d) that Scudder Weisel Capital, which is an affiliate of one of the underwriters
4 and provided the Company with approximately 17% of its revenue, was listed in the Prospectus as
5 a customer despite the fact that it was cancelling its contract with Loudcloud;

6 (e) that Loudcloud was contemplating a restructuring which included a cost-
7 cutting restructuring involving, among other things, a workforce reduction of over 190 employees;
8 and

9 (f) that as contemplated by defendants, the Loudcloud Offering would *not* raise
10 enough money to allow Loudcloud to reach cashflow breakeven.

11 **COUNT I**

12 **For Violation of Section 11 of the Securities Act** 13 **Against All Defendants**

14 33. Plaintiffs incorporate by reference ¶¶1-32 above. This Count is asserted by plaintiffs
15 against all defendants and on behalf of persons who acquired shares of Loudcloud pursuant or
16 traceable to the Prospectus.

17 34. Loudcloud is the issuer of stock issued via the Prospectus. As such, Loudcloud is
18 *strictly liable* for each false and misleading statement in the Prospectus.

19 35. The Individual Defendants are Andreessen, Horowitz, Sherwood, Campbell, Ovitz
20 and Rachleff. Each of the Individual Defendants participated in the Offering and was a signatory
21 of the Prospectus. Similarly, the Underwriter Defendants each participated in the preparation and
22 consummation of the Offering. The Underwriter Defendants issued, caused to be issued, and
23 participated in the issuance of the materially false and misleading Prospectus, which misrepresented
24 or failed to disclose, *inter alia*, the material facts concerning the business of Loudcloud as set forth
25 herein. Each of these defendants had a duty to make a reasonable investigation of the statements
26 contained in the Prospectus to ensure that said statements were true and that there was no omission
27 to state any material fact required to be stated in order to make the statements contained therein not
28 misleading. In the exercise of reasonable care, defendants should have known of the material

1 misstatements and omissions contained in the Prospectus as set forth herein. None of the defendants
 2 made a reasonable investigation or possessed reasonable grounds for the belief that statements
 3 contained in the Prospectus were true or that there was not any omission of material facts necessary
 4 to make the statements made therein not misleading. As such, each of these defendants are liable
 5 to plaintiff and the Class.

6 36. Each of the defendants named in Count I issued, caused to be issued and participated
 7 in the issuance of materially false and misleading written statements to the investing public which
 8 were contained in the Prospectus which misrepresented or failed to disclose, *inter alia*, the facts set
 9 forth above. By reasons of the conduct herein alleged, each defendant violated, and/or controlled
 10 a person who violated, §11 of the Securities Act. As a direct and proximate result of defendants'
 11 wrongful conduct, the price for Loudcloud stock was artificially inflated and plaintiff and the Class
 12 suffered substantial damages in connection with the acquisition of Loudcloud stock.

13 37. Plaintiff and other members of the Class acquired their Loudcloud stock without
 14 knowledge of the untruths or omissions alleged herein. Plaintiff and the other members of the Class
 15 were thus damaged by defendants' misconduct and by the material misstatements and omissions of
 16 the aforementioned Prospectus.

17 38. This action was brought within one year after the discovery of the untrue statements
 18 and omissions and within three years after Loudcloud stock was offered to the public.

19 **COUNT II**

20 **For Violation of Section 12(a)(2) of the Securities Act** 21 **Against Loudcloud, Andreessen and the Underwriter Defendants**

22 39. Plaintiffs incorporate by reference ¶¶1-32 as if set forth herein.

23 40. This Count is asserted by each of the members of the Class who bought their shares
 24 from any of the underwriters for violation of §12(a)(2) of the Securities Act against the Underwriter
 25 Defendants, Loudcloud and defendant Andreessen.

26 41. By means of the Prospectus and Roadshow presentations, defendants were able to,
 27 and did, sell or cause plaintiff and members of the Class to purchase new Loudcloud shares.
 28

1 42. Each defendant named in this Count solicited and/or was a substantial factor in the
2 purchase or acquisition by plaintiff and the Class of Loudcloud stock. Defendants were motivated,
3 at least in part, by a desire to serve their own financial interests. Said defendants did the following
4 acts in furtherance of the sale and/or issuance of Loudcloud stock:

5 (a) They actively and jointly drafted, revised, approved and mailed to the
6 members of the Class the Prospectus by which Loudcloud shares were issued. The Prospectus was
7 a "selling document," calculated by these defendants to create interest in Loudcloud stock and was
8 filed with the SEC and widely distributed by defendants for that purpose;

9 (b) These defendants finalized the Prospectus and caused it to become effective.
10 But for these defendants having drafted, signed and/or filed the Prospectus with the SEC, the
11 Offering could not have been completed;

12 (c) These defendants conceived and planned the Offering and together jointly
13 orchestrated all activities necessary to effect the sale of Loudcloud securities to the investing public,
14 including plaintiff and the Class, by issuing the securities, promoting the securities, supervising their
15 distribution to the investing public, and jointly drafting the misleading Prospectus; and

16 (d) As a key part of the sales process, the defendants named in this Count
17 organized and participated in a nationwide "Roadshow" to stimulate interest in the Offering. During
18 February and March 2001, defendants conducted scripted Roadshow presentations for Loudcloud
19 shareholders, which presentations were designed to foment interest in the Offering in light of the
20 difficult market conditions. The Roadshow presentations took place across the country, including
21 in San Francisco, Los Angeles and New York City. At each presentation, defendants assured
22 shareholders, among other things, that at the time of the Roadshow, Loudcloud was planning and
23 preparing to expand its business, operations and employee headcount, that Loudcloud's business was
24 stable and improving, and that demand remained strong for Loudcloud's products and services. As
25 part of the presentations, defendant Andreessen conducted overhead presentations detailing the
26 Offering and the performance of Loudcloud.

27 43. But for the solicitation by these defendants as set forth above, the Offering could not
28 and would not have been accomplished. In the exercise of reasonable care, the defendants should

1 have known of the misstatements and omissions contained in the Roadshow presentations and
2 Prospectus as set forth above.

3 44. None of the false and misleading statements and omissions described herein were
4 known to the members of the Class at the time they acquired Loudcloud stock.

5 45. By reason of the conduct alleged herein, these defendants violated §12(a)(2) of the
6 Securities Act. As a direct and proximate result of these violations of §12(a)(2), plaintiff and the
7 Class sustained substantial damage in connection with their purchase and/or acquisition of
8 Loudcloud stock.

9 46. Members of the Class purchased or otherwise acquired Loudcloud shares pursuant
10 to the defective Prospectus. Plaintiff did not know, or in the execution of reasonable diligence could
11 not have known, of the untruths and omissions contained in the Prospectus or made in connection
12 with the Roadshow presentations.

13 47. Plaintiff hereby offers to tender to defendants those securities which members of the
14 Class continue to own, on behalf of all members of the Class who continue to own such securities,
15 in return for the consideration paid for those securities together with interest thereon.

16 48. By reason of the conduct alleged herein, these defendants violated, and/or controlled
17 a person who violated, §12(a)(2) of the Securities Act. As a direct and proximate result of these
18 violations of §12(a)(2), plaintiff and the other members of the Class sustained substantial damage
19 in connection with the purchase of Loudcloud stock. On behalf of all members of the Class who still
20 hold their Loudcloud shares, plaintiff seeks rescissory relief. Accordingly, plaintiff, on behalf of all
21 members of the Class who continue to own such securities, seeks to exercise his right to rescind and
22 recover the consideration paid for Loudcloud shares and hereby elects to rescind and tender all shares
23 held by members of the Class to the defendants sued herein.

24 49. Less than three years has elapsed from the time that the securities upon which this
25 Count is brought were sold to the public to the time of the filing of this action. Less than one year
26 has elapsed from the time when plaintiff discovered or reasonably could have discovered the facts
27 upon which this Count is based to the time of the filing of this action.

COUNT III

**For Violation of Section 15 of the Securities Act Against
Loudcloud, Andreessen, Horowitz, Sherwood, Campbell, Ovitz and Rachleff**

50. Plaintiffs incorporate by reference ¶¶1-32 as if set forth herein. This Count is asserted by plaintiff against Andreessen, Horowitz, Sherwood, Campbell, Ovitz and Rachleff.

51. These defendants acted as controlling persons of Loudcloud within the meaning of §15 of the Securities Act. Loudcloud controlled defendants Andreessen, Horowitz, Sherwood, Campbell, Ovitz and Rachleff. By reason of their stock ownership, senior management positions and/or directorships at Loudcloud, as alleged above, these defendants, individually and acting pursuant to a common plan, had the power to influence and exercised the same to cause Loudcloud to engage in the unlawful acts and conduct complained of herein.

52. By reason of such conduct, the defendants named in this Count are liable pursuant to §15 of the Securities Act. As a direct and proximate result of their wrongful conduct, plaintiff and the Class suffered damages in connection with their purchase of Loudcloud stock.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

B. Against defendants, jointly and severally, for damages suffered as a result of defendants' violation of the securities laws;

C. Awarding plaintiff and the members of the Class pre-judgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs;

D. Awarding rescission or rescissory damages to members of the Class who no longer hold their Loudcloud stock; and

E. Awarding such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: October 19, 2001

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Attorneys for Plaintiff

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

ATTORNEY OF RECORD FOR
PLAINTIFF LORRY WAGNER